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E-filing

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

CV 12 1493

15 DAVID MENARD, an individual;  
16 DONOVAN BOYLE, an individual; and  
17 SHAMELE55, a California general  
18 partnership,

19 Plaintiffs,

20 v.

21 BEATMUNK, LLC, a Texas limited liability  
22 company,

23 Defendant.

Case No.

COMPLAINT FOR DECLARATORY  
AND RELATED EQUITABLE  
RELIEF

DEMAND FOR JURY TRIAL

FILED  
2012 MAR 26 P 12:04  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIF.

FAXED

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Plaintiffs hereby allege as follows:

**PARTIES**

1. Plaintiff David Menard (hereafter “Menard”) is an individual residing in this judicial district in Millbrae, California, and a citizen of the state of California.

2. Plaintiff Donovan Boyle (hereafter “Boyle”) is an individual residing in this judicial district in San Bruno, California, and a citizen of the state of California.

3. Plaintiff Shamele55 (hereafter “Shamele55”) is a California general partnership, consisting of Plaintiffs Menard and Boyle as its two general partners, and is located in this judicial district. Menard, Boyle and Shamele55 are hereafter collectively and severally referred to as “Plaintiffs.”

4. Plaintiffs are informed and believe that Defendant Beatmunk, LLC (hereafter “Defendant”) is a Texas limited liability company located in Austin, Texas, and doing business in this judicial district and elsewhere.

**JURISDICTION**

5. This is an action for declaratory relief under 28 U.S.C. § 2201, and the Court has subject matter jurisdiction over the claims herein for declaratory and related equitable relief arising under and relating to the Copyright Act, 17 U.S.C. § 101 *et seq.*, and the Lanham Act, 15 U.S.C. § 1051 *et seq.* pursuant to 28 U.S.C. §§ 1331 and 1338.

**VENUE**

6. Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in this Court because a substantial part of the events or omissions giving rise to the claims alleged herein occurred within this judicial district.

**INTRADISTRICT ASSIGNMENT**

7. Assignment is proper in this division under Civil L.R. 3-2(c) and (d), because a substantial part of the events or omissions giving rise to the claims occurred in the County of San Mateo.

GENERAL ALLEGATIONS

1  
2 8. Plaintiffs have created glasses that have illuminated frames (such glasses including the  
3 design thereof are hereafter referred to collectively as "Plaintiffs' Illuminated Glasses").

4 9. Defendant has also created glasses that have illuminated frames (such glasses including  
5 the design thereof are hereafter referred to collectively as "Defendant's Illuminated Glasses").

6 10. Defendant's attorney in Dallas, Texas has on behalf of Defendant sent to Plaintiffs in  
7 this judicial district, via first class U.S. mail and email, a cease and desist letter dated February  
8 16, 2012 regarding Plaintiffs' Illuminated Glasses, which was received by Plaintiffs in this  
9 judicial district. A true and correct copy of the letter and the exhibits sent with and referenced in  
10 it are attached hereto collectively as Exhibit A and incorporated herein as though fully set forth.  
11 Plaintiffs deny each and all of the accusations of wrongful conduct on their part contained in the  
12 letter.

13 11. In the cease and desist letter (i.e., Exhibit A hereto), Defendant's attorney claims and  
14 asserts that Defendant's Illuminated Glasses are protected by copyright and that Plaintiffs'  
15 Illuminated Glasses infringe the copyright in and to Defendant's Illuminated Glasses under U.S.  
16 copyright law. Defendant's attorney enclosed as Exhibit 2 to the letter what he purported to be a  
17 copy of a copyright registration application for Defendant's Illuminated Glasses that purportedly  
18 was filed by Defendant with the U.S. Copyright Office seeking copyright registration of a work  
19 entitled "illuminated glasses frames" and naming Defendant as the copyright claimant, along  
20 with photographs of Defendant's Illuminated Glasses which appear to have been submitted to the  
21 U.S. Copyright Office with the application as the deposit copies of the work sought to be  
22 registered by the application. The date the application was signed and the date it was filed with  
23 the U.S. Copyright Office are unknown to Plaintiffs because those dates were blacked out and  
24 redacted on the copy of the application Defendant's attorney sent to Plaintiffs, as is the date of  
25 first publication on the application and thus the claimed first date of publication (if any) is also  
26 unknown to Plaintiffs. Plaintiffs are informed and believe that the U.S. Copyright Office has not  
27 yet issued a copyright registration to Defendant for Defendant's Illuminated Glasses as a result of  
28 this application or any other copyright registration application that Defendant may have filed

1 with the U.S. Copyright Office.

2 12. In the cease and desist letter (i.e., Exhibit A hereto), Defendant's attorney also claims  
3 and asserts that Plaintiffs have infringed in violation of the Lanham Act certain of Defendant's  
4 trademarks purportedly used by Defendant as trademarks for Defendant's Illuminated Glasses,  
5 namely the word mark ELECTRO SHADES and a mark that Defendant's attorney refers to in his  
6 letter as "Illuminated Eyewear Periphery Logo" (hereafter "Defendant's Logo") which appears  
7 from Exhibit 5 to the cease and desist letter from Defendant's attorney to be merely a  
8 photographic depiction of Defendant's Illuminated Glasses themselves. Plaintiffs are informed  
9 and believe that Defendant does not own any U.S. trademark registration, or pending trademark  
10 registration application, for either of these purported marks Defendant claims to own or with  
11 respect to any trade dress of Defendant's Illuminated Glasses.

12 13. Defendant's attorney claims and asserts in his cease and desist letter (i.e., Exhibit A  
13 hereto) that Plaintiffs are infringing Defendant's marks referred to in the preceding paragraph by  
14 selling Plaintiffs' Illuminated Glasses using Defendant's ELECTRO SHADES mark and  
15 Defendant's Logo at websites located at <http://www.electroshades.com> and at  
16 <http://www.facebook.com/electroshades>, and by registering such domain name and Facebook  
17 account and using them to sell Plaintiffs' Illuminated Glasses. Plaintiffs are, however, not selling  
18 and have not been selling Plaintiffs' Illuminated Glasses, and are not and have not been offering  
19 them for sale, at these websites or elsewhere. Plaintiffs are thus not using in commerce any of  
20 Defendant's marks as the term "use in commerce" is defined in the Lanham Act at 15 U.S.C. §  
21 1127. Consequently, Plaintiffs are thus not liable under 15 U.S.C. § 1114 and 15 U.S.C. § 1125  
22 because, *inter alia*, both statutes require "use in commerce" of a confusingly similar mark or  
23 designation in order for those statutes to be violated, as is set forth in such statutes.

24 14. Defendant's attorney also claims and asserts in his cease and desist letter (i.e., Exhibit A  
25 hereto) that Plaintiffs' registration and use of the domain name [elctroshades.com](http://www.electroshades.com) and Facebook  
26 account at <http://www.facebook.com/electroshades> violates the U.S. Anticybersquatting  
27 Consumer Protection Act. Plaintiffs deny that their registration and use of the domain name  
28 [electroshades.com](http://www.electroshades.com) and Facebook account at <http://www.facebook.com/electroshades> violates the

1 U.S. Anticybersquatting Consumer Protection Act, as more particularly set forth below in this  
2 Complaint.

3 15. At the conclusion of the cease and desist letter at pages 3 and 4, Defendant's attorney  
4 warns Plaintiffs that Defendant "aggressively protects its intellectual property rights" and makes  
5 11 demands on Plaintiffs including, without limitation, that Plaintiffs cease and desist from  
6 making, selling or promoting any illuminated eyewear "covered by [Defendant] Beatmunk's  
7 intellectual property" and that Plaintiffs "destroy any inventory or promotional materials." The  
8 cease and desist letter also warns Plaintiffs that Defendant is entitled to an injunction against  
9 Plaintiffs, and is entitled to recover monetary damages and attorney's fees from Plaintiffs. The  
10 cease and desist letter, at least implicitly, threatens Plaintiffs that Defendant will sue Plaintiffs for  
11 the matters referred to in the letter, presumably in Texas where Plaintiffs are informed and  
12 believe Defendant is located and where Plaintiffs have no offices, agents or employees or other  
13 presence. Plaintiffs are thus in apprehension and fear of being sued by Defendant, and  
14 consequently bring this action for declaratory relief with respect to the actual and present  
15 controversy and dispute that has arisen between Plaintiffs and Defendant.

16  
17 **FIRST CLAIM FOR RELIEF**

18 **(Declaratory Relief)**

19 16. Plaintiffs incorporate and re-allege paragraphs 1 through the immediately preceding  
20 paragraph of this Complaint as though fully set forth herein.

21 17. As alleged above, an actual present controversy has arisen between Plaintiffs, on the  
22 one hand, and Defendant on the other hand, with regard to their respective illuminated glasses  
23 and related matters. The claims asserted against Plaintiffs in the cease and desist letter sent by  
24 Defendant's attorney are federal trademark infringement claims under the federal Lanham Act,  
25 and federal copyright infringement claims under the U.S. Copyright Act, each and all of which  
26 Plaintiffs deny.

27 18. As alleged above, Defendant claims and contends in the cease and desist letter to  
28 Plaintiffs from its attorney attached hereto as Exhibit 1, *inter alia*, that Defendant's Illuminated

1 Glasses are protectable under U.S. copyright law, and that Plaintiffs' Illuminated Glasses infringe  
2 the copyright in and to Defendant's Illuminated Glasses. Plaintiffs dispute and deny such claims  
3 and contentions by Defendant and to the contrary claim and contend and allege herein that  
4 Defendant's Illuminated Glasses are not protectable under U.S. copyright law, and that Plaintiffs'  
5 Illuminated Glasses consequently do not infringe any copyright in and to Defendant's Illuminated  
6 Glasses since they are not protectable under U.S. copyright law.

7 19. Plaintiffs contend and assert and allege herein that Defendant's Illuminated Glasses are  
8 not protectable under U.S. copyright law because, among other things, under 17 U.S.C. § 101  
9 they are useful articles that do not have any separable features that are copyrightable and entitled  
10 to copyright protection, and thus they are not entitled to copyright protection under, *inter alia*, 17  
11 U.S.C. §§ 101 and 102. Plaintiffs are informed and believe that the U.S. Copyright Office denies  
12 copyright registration applications for eyewear designs and products on this basis. Plaintiffs  
13 further contend and assert in the dispute and controversy with Defendant, and allege herein on the  
14 basis of information and belief, that Defendant's Illuminated Glasses are not copyrightable and  
15 are not entitled to copyright protection because they are not wholly original works of authorship  
16 by Defendant, as required under 17 U.S.C. § 102 in order to be entitled to copyright protection, in  
17 that, *inter alia*, the shapes, configurations and designs of the glasses shown in the deposit copy  
18 photographs of Defendant's Illuminated Glasses that were sent with the cease and desist letter are  
19 not original works of authorship by Defendant.

20 20. Thus, Plaintiffs contend and assert and allege herein that contrary to Defendant's claims  
21 and contentions, Defendant has and owns no protectable copyright or copyright interest in and to  
22 Defendant's Illuminated Glasses and that consequently Plaintiffs have not committed copyright  
23 infringement under U.S. copyright law as Defendant claims and contends in its attorney's cease  
24 and desist letter with regard to Plaintiffs' Illuminated Glasses which Plaintiffs have created.  
25 Alternatively, Plaintiffs assert and contend and allege herein in the alternative that if and to extent  
26 it is deemed by the Court that there is any separable copyrightable matter in Defendant's  
27 Illuminated Glasses, which Plaintiffs deny, then in such event Plaintiffs contend and assert that  
28 Plaintiffs are not guilty of committing copyright infringement because, *inter alia*, Plaintiffs'

1 Illuminated Glasses are not substantially similar to any such separable copyrightable matter in  
2 Defendant's Illuminated Glasses as may be deemed by the Court to exist so as to constitute  
3 copyright infringement under the U.S. Copyright Act.

4 21. Thus, because Defendant's Illuminated Glasses are not entitled to copyright protection  
5 under U.S. copyright law for the reasons stated above, Defendant's copyright registration  
6 application for Defendant's Illuminated Glasses is invalid and should not result in the issuance of  
7 a copyright registration of Defendant's Illuminated Glasses issued by the U.S. Copyright Office  
8 to Defendant, or to anyone else. Further, Plaintiffs are informed and believe that Defendant's  
9 copyright registration application for Defendant's Illuminated Glasses was improperly submitted  
10 in violation of U.S. Copyright Office regulations and rules pertaining to the requirements for  
11 submitting a proper deposit copy of the work sought to be registered for copyright, in that instead  
12 of showing the particular work of authorship that is sought to be registered for copyright, the  
13 deposit copy photographs submitted by Defendant that were enclosed with the cease and desist  
14 letter to Plaintiffs from Defendant's attorney shows several numerous different glasses appearing  
15 in various different shapes, styles, colors and designs.

16 22. Therefore, Defendant's copyright registration application for Defendant's Illuminated  
17 Glasses should be ordered to be withdrawn by Defendant and/or should be ordered to be denied  
18 by the U.S. Copyright Office and/or should further be declared invalid and null and void by this  
19 Court *ab initio* as of its filing date; and, alternatively, if the U.S. Copyright Office grants  
20 Defendant's copyright registration application for Defendant's Illuminated Glasses then in such  
21 event the resulting copyright registration should be declared invalid and invalidated *ab initio* and  
22 cancelled by this Court *nunc pro tunc* as of the filing date of Defendant's copyright registration  
23 application such that it was never in force and never effective and subsisting, and Defendant  
24 and/or the U.S. Copyright Office should be directed and ordered to so cancel such registration if  
25 it issues.

26 23. As alleged above, Defendant further claims and contends in the cease and letter to  
27 Plaintiffs from its attorney attached hereto as Exhibit 1, *inter alia*, that Plaintiffs have infringed in  
28 violation of the federal Lanham Act Defendant's purported ELECTRO SHADES word mark

1 and Defendant's Logo by using such word mark and logo to sell Plaintiffs' Illuminated Glasses at  
2 websites located at <http://www.electroshades.com> and at Plaintiff's Facebook account at  
3 <http://www.facebook.com/electroshades>, and by registering such domain name and Facebook  
4 account and using them to sell Plaintiffs' Illuminated Glasses at the websites connected to those  
5 URLs.

6 24. Plaintiffs deny and dispute the foregoing claims and contentions by Defendant and,  
7 contrary to such claims and contentions by Defendant, Plaintiffs claim and contend and allege  
8 herein that they are, however, not selling and have not been selling Plaintiffs' Illuminated  
9 Glasses, and are not and have not been offering them for sale, at these websites or elsewhere.  
10 Plaintiffs thus claim and assert and allege herein that they are thus accordingly not using in  
11 commerce any of Defendant's marks and logos as the term "use in commerce" is defined in the  
12 Lanham Act at 15 U.S.C. § 1127. Consequently, Plaintiffs claim and contend and allege herein  
13 that they are thus not liable to Defendant for trademark infringement or any other matter under,  
14 *inter alia*, the Lanham Act including, but not limited to, 15 U.S.C. § 1114 and 15 U.S.C. § 1125  
15 because, *inter alia*, both statutes require "use in commerce" of a confusingly similar mark or  
16 designation in order for those statutes to be violated and in order for there to be liability  
17 thereunder, as is set forth in such statutes.

18 25. As alleged above, Defendant further claims and contends in the cease and desist letter  
19 from its attorney that Plaintiffs' registration and use of the domain name [elctroshades.com](http://www.electroshades.com) and  
20 Facebook account at <http://www.facebook.com/electroshades> violates the U.S.  
21 Anticybersquatting Consumer Protection Act. Plaintiffs deny this claim and contention by  
22 Defendant and to the contrary Plaintiffs claim and contend and allege herein that their registration  
23 and use of such domain name and Facebook account were not in violation of and do not violate  
24 or constitute violations of the U.S. Anticybersquatting Consumer Protection Act, as set forth in  
25 15 U.S.C. §1125(d) for the reasons *inter alia* set forth below.

26 26. Plaintiffs claim and contend and allege herein that the URL  
27 <http://www.facebook.com/electroshades> is not a "domain name" as that term is defined in 15  
28 U.S.C. 1127, and liability under 15 U.S.C. §1125(d) arises only where the person accused of

1 violating that statute “registers, traffics in, or uses a domain name” as provided in 15 U.S.C.  
2 §1125(d)(1)(A)(ii). Therefore, Plaintiff claims and contends and alleges herein that contrary to  
3 Defendant’s contention, Plaintiffs’ creation and use of a Facebook page with the URL  
4 <http://www.facebook.com/electroshades> does not and cannot violate 15 U.S.C. §1125(d).

5 27. Further, Plaintiffs claim and contend and allege herein that Plaintiffs did not register  
6 and do not use the domain name elctroshades.com (and did not create the Facebook account at  
7 <http://www.facebook.com/electroshades> and have not used that account) with any bad faith intent  
8 as is required under 15 U.S.C. §1125(d)(1)(A)(i) for there to be any liability under that statute.

9 28. Declaratory relief as requested herein is appropriate because it will serve a useful  
10 purpose in clarifying and settling the legal relations and disputes in issue between Plaintiffs and  
11 Defendant as alleged in this Complaint, and will also terminate and afford Plaintiffs relief from  
12 uncertainty, insecurity and the dispute and controversy with Defendant as alleged herein that  
13 gives rise to the instant action. Such actual and present dispute and controversy with Defendant,  
14 and the claims and contentions of wrongful and illegal conduct in violation of federal law  
15 asserted against Plaintiffs by Defendant as alleged herein, harm and injure Plaintiffs, threaten  
16 Plaintiffs with litigation, creates uncertainty and insecurity in Plaintiffs, and casts an injurious  
17 cloud over Plaintiffs and their activities, including business activities. Unless Plaintiffs are  
18 granted declaratory relief as requested herein, such dispute and controversy with Defendant, and  
19 the claims and contentions of wrongful and illegal conduct in violation of federal law asserted  
20 against Plaintiffs by Defendant as alleged herein, will continue to do so to the ongoing detriment  
21 and harm to Plaintiffs.

22 29. Plaintiffs are therefore entitled to and seek declaratory relief in this action in the form of  
23 a judicial declaration which declares that:

24 (A) Plaintiffs are not guilty of committing copyright infringement and are not guilty of  
25 committing trademark infringement (including violating the U.S. Anticybersquatting  
26 Consumer Protection Act, as set forth in 15 U.S.C. §1125(d)) as is claimed and asserted in the  
27 cease and desist letter sent to Plaintiffs by Defendant’s attorney which is attached hereto as  
28 Exhibit A;

1 (B) Defendant's Illuminated Glasses are not entitled to copyright protection and are not  
2 protectable under U.S. copyright law, because, *inter alia*, as alleged above, they are useful  
3 articles under 17 U.S.C. § 101 that do not have any separable features that are copyrightable  
4 and entitled to copyright protection, and/or because they are not original works of authorship  
5 by Defendant, and thus they are not entitled to copyright protection under, *inter alia*, 17  
6 U.S.C. §§ 101 and 102;

7 (C) Therefore, Plaintiffs' Illuminated Glasses do not infringe any valid protectable copyright  
8 right or interest that Defendant has in Defendant's Illuminated Glasses because, as stated  
9 above, Defendant's Illuminated Glasses are not entitled to copyright protection and are not  
10 protectable under U.S. copyright law and Defendant thus does not have, own or hold any such  
11 valid protectable copyright right or interest in and to or otherwise with respect to Defendant's  
12 Illuminated Glasses. (Alternatively, if and to the extent that the Court deems that  
13 Defendant's Illuminated Glasses do contain separable features that are copyrightable original  
14 works of authorship by Defendant that are entitled to copyright protection, which Plaintiffs  
15 deny, then in such event it should in the alternative be declared that Plaintiffs' Illuminated  
16 Glasses do not infringe any valid protectable copyright right or interest that Defendant has in  
17 Defendant's Illuminated Glasses with regard to such separable features that are copyrightable  
18 original works of authorship because Plaintiffs' Illuminated Glasses are not and contain no  
19 features that are substantially similar to any such separable copyrightable features of  
20 Defendant's Illuminated Glasses);

21 (D) Defendant's copyright registration application which seeks to register Defendant's  
22 Illuminated Glasses for copyright with the U.S. Copyright Office, as alleged above, is thus  
23 invalid and void, and any registration that may issue therefrom by the U.S. Copyright Office  
24 is also consequently invalid and void, *ab initio* and *nunc pro tunc* as of the filing date of such  
25 application;

26 (E) Plaintiffs are not liable to Defendant for trademark infringement or other related claims  
27 under the Lanham Act including the U.S. Anticybersquatting Consumer Protection Act as set  
28 forth in 15 U.S.C. §1125(d) as part of the Lanham Act, and have not violated the Lanham

1 Act as asserted and claimed by Defendant, because, *inter alia*, liability 15 U.S.C. § 1114 and  
2 15 U.S.C. § 1125 both require “use in commerce” of a confusingly similar mark or  
3 designation in order for those statutes to be violated, but Plaintiffs have not been and are not  
4 using in commerce any of Defendant’s marks and logos as the term “use in commerce” is  
5 defined in the Lanham Act at 15 U.S.C. § 1127 because they are, however, not selling and  
6 have not been selling Plaintiffs’ Illuminated Glasses, and are not and have not been offering  
7 them for sale;

8 (F) Further, Plaintiffs are not liable to Defendant for violating, and have not violated, the  
9 U.S. Anticybersquatting Consumer Protection Act as set forth in 15 U.S.C. §1125(d) because,  
10 *inter alia*, Plaintiffs have not registered, trafficked in or used the domain name  
11 elctroshades.com with any bad faith as is required for liability under that statute as provided  
12 in 15 U.S.C. §1125(d)(1)(A)(i); and, the URL address for Plaintiffs’ Facebook account  
13 <http://www.facebook.com/electroshades> is not subject to and does not give rise to a claim  
14 under 15 U.S.C. §1125(d) because that statute applies to a “domain name” but such URL  
15 address for Plaintiffs’ Facebook account is not a “domain name” as that term is defined in 15  
16 U.S.C. § 1127 (alternatively, if the Court deems that such URL address for Plaintiffs’  
17 Facebook account is a “domain name” that can be the subject of and give rise to a claim  
18 under 15 U.S.C. §1125(d), which Plaintiffs deny, then in such event the Court should declare  
19 that Plaintiffs are not liable to Defendant for violating, and have not violated, the U.S.  
20 Anticybersquatting Consumer Protection Act as set forth in 15 U.S.C. §1125(d) with respect  
21 to their use of such URL for their Facebook account because, *inter alia*, Plaintiffs have not  
22 registered, trafficked in or used it with any bad faith as is required for liability under that  
23 statute as provided in 15 U.S.C. §1125(d)(1)(A)(i)).

24 30. As further related equitable relief to effectuate the foregoing declaratory relief,  
25 Plaintiffs are entitled to and request as part of their relief an order directing Defendant to  
26 withdraw from the U.S. Copyright Office its copyright registration application for Defendant’s  
27 Illuminated Glasses as alleged herein, and/or an order directing the U.S. Copyright Office to not  
28 grant such application and to not issue a certificate of copyright registration to Defendant. In the

1 event that before such an order is issued by the Court said application is granted and a certificate  
2 of copyright registration is issued to Defendant, then in such event Plaintiffs are entitled to and  
3 request as part of their relief an order directing Defendant to immediately take all the necessary  
4 actions to cause the U.S. Copyright Office to cancel such registration effective *nunc pro tunc* as  
5 of the filing date of the application, and/or directing the U.S. Copyright Office to immediately  
6 cancel such registration effective *nunc pro tunc* as of the filing date of the application with or  
7 without the request of Defendant.

8 31. Plaintiffs are also entitled to recover and seek in this action under 17 U.S.C. § 505 their  
9 reasonable attorney's fees as part of their costs.

10  
11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiffs seek judgment in their favor and against Defendant granting  
13 Plaintiffs the following relief:

- 14 1. Declaratory relief in the form of a judicial declaration declaring that:
- 15 A. Plaintiffs are not guilty of committing copyright infringement and are not guilty of  
16 committing trademark infringement (including violating the U.S.  
17 Anticybersquatting Consumer Protection Act, as set forth in 15 U.S.C. §1125(d))  
18 as is claimed and asserted in the cease and desist letter sent to Plaintiffs by  
19 Defendant's attorney which is attached to Plaintiffs' Complaint as Exhibit A;
  - 20 B. Defendant's Illuminated Glasses are not entitled to copyright protection and are  
21 not protectable under U.S. copyright law, because, *inter alia*, they are useful  
22 articles under 17 U.S.C. § 101 that do not have any separable features that are  
23 copyrightable and entitled to copyright protection, and/or because they are not  
24 original works of authorship by Defendant, and thus they are not entitled to  
25 copyright protection under, *inter alia*, 17 U.S.C. §§ 101 and 102;
  - 26 C. Therefore, Plaintiffs' Illuminated Glasses do not infringe any valid protectable  
27 copyright right or interest that Defendant has in Defendant's Illuminated Glasses  
28 because, as stated above, Defendant's Illuminated Glasses are not entitled to

1 copyright protection and are not protectable under U.S. copyright law and  
2 Defendant thus does not have, own or hold any such valid protectable copyright  
3 right or interest in and to or otherwise with respect to Defendant's Illuminated  
4 Glasses. (Alternatively, if and to the extent that the Court deems that Defendant's  
5 Illuminated Glasses do contain separable features that are copyrightable original  
6 works of authorship by Defendant that are entitled to copyright protection, which  
7 Plaintiffs deny, then in such event it should in the alternative be declared that  
8 Plaintiffs' Illuminated Glasses do not infringe any valid protectable copyright  
9 right or interest that Defendant has in Defendant's Illuminated Glasses with regard  
10 to such separable features that are copyrightable original works of authorship  
11 because Plaintiffs' Illuminated Glasses are not and contain no features that are  
12 substantially similar to any such separable copyrightable features of Defendant's  
13 Illuminated Glasses);

14 D. Defendant's copyright registration application which seeks to register Defendant's  
15 Illuminated Glasses for copyright with the U.S. Copyright Office is thus invalid  
16 and void, and any registration that may issue therefrom by the U.S. Copyright  
17 Office is also consequently invalid and void, *ab initio* and *nunc pro tunc* as of the  
18 filing date of such application;

19 E. Plaintiffs are not liable to Defendant for trademark infringement or other related  
20 claims under the Lanham Act including the U.S. Anticybersquatting Consumer  
21 Protection Act as set forth in 15 U.S.C. § 1125(d) as part of the Lanham Act, and  
22 have not violated the Lanham Act as asserted and claimed by Defendant, because,  
23 *inter alia*, liability under 15 U.S.C. § 1114 and 15 U.S.C. § 1125 both require "use  
24 in commerce" of a confusingly similar mark or designation in order for those  
25 statutes to be violated, but Plaintiffs have not been and are not using in commerce  
26 any of Defendant's marks and logos as the term "use in commerce" is defined in  
27 the Lanham Act at 15 U.S.C. § 1127 because they are, however, not selling and  
28

1 have not been selling Plaintiffs' Illuminated Glasses, and are not and have not  
2 been offering them for sale; and,

3 F. Further, Plaintiffs are not liable to Defendant for violating, and have not violated,  
4 the U.S. Anticybersquatting Consumer Protection Act as set forth in 15 U.S.C.  
5 §1125(d) because, *inter alia*, Plaintiffs have not registered, trafficked in or used  
6 the domain name elctroshades.com with any bad faith as is required for liability  
7 under that statute as provided in 15 U.S.C. §1125(d)(1)(A)(i); and, the URL  
8 address for Plaintiffs' Facebook account <http://www.facebook.com/electroshades>  
9 is not subject to and does not give rise to a claim under 15 U.S.C. §1125(d)  
10 because that statute applies to a "domain name" but such URL address for  
11 Plaintiffs' Facebook account is not a "domain name" as that term is defined in 15  
12 U.S.C. § 1127 (alternatively, if the Court deems that such URL address for  
13 Plaintiffs' Facebook account is a "domain name" that can be the subject of and  
14 give rise to a claim under 15 U.S.C. §1125(d), which Plaintiffs deny, then in such  
15 event the Court should declare that Plaintiffs are not liable to Defendant for  
16 violating, and have not violated, the U.S. Anticybersquatting Consumer Protection  
17 Act as set forth in 15 U.S.C. §1125(d) with respect to their use of such URL for  
18 their Facebook account because, *inter alia*, Plaintiffs have not registered,  
19 trafficked in or used it with any bad faith as is required for liability under that  
20 statute as provided in 15 U.S.C. §1125(d)(1)(A)(i)).

21 2. As further related equitable relief to effectuate the foregoing declaratory relief,  
22 Plaintiffs request as part of their relief in the judgment in this action an order directing  
23 Defendant to immediately withdraw from the U.S. Copyright Office its copyright  
24 registration application for Defendant's Illuminated Glasses as alleged herein, and/or an  
25 order directing the U.S. Copyright Office to not grant such application and to not issue a  
26 certificate of copyright registration to Defendant. In the event that before such an order  
27 is issued and a judgment containing it is entered by the Court said application is granted  
28 and a certificate of copyright registration is issued to Defendant, then in such event

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Plaintiffs request as part of their relief an order directing Defendant to immediately take all the necessary actions required to cause the U.S. Copyright Office to cancel such registration effective *nunc pro tunc* as of the filing date of the application, and/or directing the U.S. Copyright Office to immediately cancel such registration effective *nunc pro tunc* as of the filing date of the application with or without the request of Defendant;

- 3. Plaintiff's reasonable attorney's fees as part of their costs under 17 U.S.C. § 505;
- 4. Costs of suit herein; and,
- 5. Such other and further relief as the Court deems just and proper.

DATED: March 26, 2012

RUBINSTEIN LAW

By \_\_\_\_\_  
Yano L. Rubinstein  
Phillip Seltzer  
Attorneys For Plaintiffs

**DEMAND FOR JURY TRIAL**

1  
2 Pursuant to U.S. District Court for the Northern District of California Local Rule 3-6,  
3 Plaintiffs David Menard, an individual, Donovan Boyle, an individual, and Shamele55, a  
4 California general partnership, hereby demand a trial by jury on each and all matters triable by  
5 jury in the instant action.  
6  
7

8 DATED: March 26, 2012

RUBINSTEIN LAW



11 By \_\_\_\_\_  
12 Yano L. Rubinstein  
13 Phillip Seltzer  
14 Attorneys For Plaintiffs  
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**RUBINSTEIN LAW**

# **Exhibit A**

# CONLEY ROSE

INTELLECTUAL PROPERTY LAW  
INCLUDING PATENTS, TRADEMARKS,  
COPYRIGHTS AND UNFAIR COMPETITION  
WWW.CONLEYROSE.COM

A Professional Corporation  
**DALLAS OFFICE**  
GRANITE PARK THREE  
5601 GRANITE PARKWAY, SUITE 750  
PLANO, TEXAS 75024-6616  
(972) 731-2288  
FACSIMILE (972) 731-2289

HOUSTON OFFICE  
(713) 238-8000  
AUSTIN OFFICE  
(512) 391-1900

Writer's Direct Dial: (972) 731-2272  
Email: [groldolph@dfw.conleyrose.com](mailto:groldolph@dfw.conleyrose.com)

February 16, 2012

*Via email and first class mail*

Mr. David Menard  
Shamele55  
300 Murchison Drive, Unit 112  
Millbrae, California 94030

[davidsmenard@gmail.com](mailto:davidsmenard@gmail.com)

Mr. Donovan Boyle  
Shamele55  
205 Fernwood Drive  
San Bruno, California 94066

[donovanboyle@yahoo.com](mailto:donovanboyle@yahoo.com)

Regarding: Shamele55's Infringing Use of Beatmunk's Copyrights and Trademarks  
Our File: 4403-00100

Dear Sirs:

Our firm represents Beatmunk, LLC ("Beatmunk") in connection with its intellectual property matters. Beatmunk owns copyrights, trademarks, and a patent application, and has developed extensive common law rights in and to its illuminated eyewear. It has recently come to the attention of Beatmunk that Shamele55 is selling illuminated eyewear that infringe Beatmunk's copyrights, trademarks, and claims in its patent application. This is of grave concern to our client in view of its well-established and longstanding rights in its intellectual property for illuminated eyewear.

## Copyright Infringement

Beatmunk owns copyrights associated with its illuminated eyewear. Attached as Exhibit 1 is a copy of Beatmunk's pending U.S. copyright application for illuminated eyewear.

As shown in the attached Exhibit 2, Mr. Boyle obtained two pairs of Beatmunk's ELECTRO SHADES™ brand illuminated eyewear on or about October 20, 2011. While Mr. Boyle is free to use his ELECTRO SHADES™ brand illuminated eyewear for his own personal use, his purchase does not give him the right to copy the ELECTRO SHADES™ brand illuminated eyewear or market, manufacture, or sell any illuminated eyewear that would infringe Beatmunk's copyrights.

February 16, 2012

Page 2

As shown in the attached Exhibit 3, Shamele55 is marketing and selling Shamele55 Shades, which are substantially identical to Beatmunk's ELECTRO SHADES™ brand illuminated eyewear, at <http://www.facebook.com/SHAMELE55>. Also, Shamele55 is marketing its illuminated eyewear at <http://www.kickstarter.com/projects/davidmenard/shamele55-shades>, as evidenced by Exhibit 4.

Shamele55's marketing, manufacturing, and selling of its illuminated eyewear is an infringing act under the U.S. copyright laws. As such, Beatmunk is entitled to an injunction that prevents Shamele55 from selling illuminated eyewear covered by Beatmunk's copyrights, as well as the greater of: (1) actual damages plus profits; or (2) statutory damages up to \$150,000. Beatmunk is also entitled to recover court costs and attorney's fees. In addition, copyright infringement is a criminal offense carrying penalties up to ten years in prison.

#### **Trademark Infringement - ELECTRO SHADES™**

Beatmunk has protectable rights in its ELECTRO SHADES™ trademark, which is unique and distinctive within the eyewear industry. As shown in the attached Exhibit 5, the mark ELECTRO SHADES™ is used to identify Beatmunk as the supplier of its unique illuminated eyewear at <http://get.beatmunk.com/>. In addition, Beatmunk markets its ELECTRO SHADES™ brand illuminated eyewear at <http://www.facebook.com/beatmunk>.

As shown in the attached Exhibit 6, Mr. Menard registered the website <http://www.electroshades.com/> on November 9, 2011. As shown in Exhibit 7, Shamele55 is marketing and selling illuminated eyeglasses using Beatmunk's ELECTRO SHADES™ trademark at <http://www.electroshades.com/>. In addition, Shamele55 is marketing and selling illuminated eyeglasses using Beatmunk's ELECTRO SHADES™ trademark at <http://facebook.com/electroshades>, as shown in the attached Exhibit 8. Such actions are misleading and likely to cause customer confusion because they indicate that ELECTRO SHADES™ brand illuminated eyewear is originated by Shamele55, not Beatmunk.

Shamele55's registration of the website <http://www.electroshades.com/> and the Facebook account <http://facebook.com/electroshades> when they had knowledge of Beatmunk's ELECTRO SHADES™ trademark is an infringing act under the U.S. Trademark laws. It is also a violation of the U.S. Anticybersquatting Consumer Protection Act. As such, Beatmunk is entitled to an injunction that prevents Shamele55 from selling any illuminated eyewear bearing the ELECTRO SHADES™ trademark, as well as monetary damages for lost sales, which may be trebled at the discretion of the court. Beatmunk is also entitled to recover attorney's fees.

#### **Trademark Infringement – Illuminated Eyewear Periphery Logo**

Beatmunk has protectable rights in its Illuminated Eyewear Periphery Logo, which is unique and distinctive within the eyewear industry. As shown in the attached Exhibit 5, the

February 16, 2012

Page 3

Illuminated Eyewear Periphery Logo is used as the background on Beatmunk's website, and is used to identify Beatmunk as the supplier of its unique ELECTRO SHADES™ brand illuminated eyewear. In addition, Beatmunk uses its Illuminated Eyewear Periphery Logo at <http://get.beatmunk.com/> and <http://www.facebook.com/beatmunk> to market its ELECTRO SHADES™ brand illuminated eyewear.

As shown in Exhibit 7, Shamele55 is marketing and selling illuminated eyeglasses using Beatmunk's Illuminated Eyewear Periphery Logo at <http://www.electroshades.com/>. In addition, Shamele55 is marketing and selling illuminated eyeglasses using Beatmunk's Illuminated Eyewear Periphery Logo at <http://www.facebook.com/SHAMELE55> and <http://facebook.com/electroshades>, as shown in Exhibits 3 and 8, respectively. Such actions are misleading and likely to cause customer confusion because they indicate that illuminated eyewear associated with the Illuminated Eyewear Periphery Logo is originated by Shamele55, not Beatmunk.

Shamele55's use of the Beatmunk's Illuminated Eyewear Periphery Logo is an infringing act under the U.S. Trademark laws. As such, Beatmunk is entitled to an injunction that prevents Shamele55 from selling any illuminated eyewear in conjunction with the Illuminated Eyewear Periphery Logo, as well as monetary damages for lost sales, which may be trebled at the discretion of the court. Beatmunk is also entitled to recover attorney's fees.

### **Dispute Resolution**

Beatmunk aggressively protects its intellectual property rights, including those protected by patent, copyright, and trade dress. As stated above, Beatmunk demands that Shamele55:

- a) Cease and desist making, selling, promoting any illuminated eyewear covered by Beatmunk's intellectual property, and destroy any inventory or promotional materials;
- b) Discontinue use of the BEATMUNK, ELECTRO SHADES, and ILLUMINATE YOUR NIGHT trademarks, as well as the Illuminated Eyewear Periphery Logo;
- c) Remove the Shamele55 kickstarter.com webpage:  
<http://www.kickstarter.com/projects/davidmenard/shamele55-shades>;
- d) Remove the <http://shamele55.com> domain;
- e) Remove the Shamele55 Facebook page <http://www.facebook.com/SHAMELE55>;
- f) Remove the Shamele55 Twitter accounts [https://twitter.com/SHAME\\_LE55](https://twitter.com/SHAME_LE55);
- g) Remove the YouTube video <http://www.youtube.com/watch?v=z8F421LeJzk>;

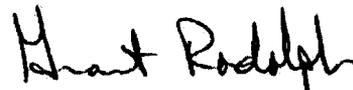
February 16, 2012

Page 4

- h) Transfer the <http://electroshades.com> domain, the <http://facebook.com/electroshades> Facebook page, and other online accounts using Beatmunk's intellectual property to Beatmunk;
- i) Remove all references, posts, and pictures of Shamele55 Shades online;
- j) Remove any other Facebook/Twitter/social media posts including those on Mr. Menard's and Mr. Boyle's personal Facebook/Twitter/other webpages, blog posts, online links or posts, or any other promotion relating to Shamele55 Shades; and
- k) Provide a full accounting of customer activity and sales received from websites, blogs, and other online media, including the geographic locations, store or venue names, quantity and dollar sales volumes of all goods sold that contain Beatmunk's trademarks, logo, and copyright.

We trust that you understand and appreciate the seriousness of this matter. Upon consideration of the foregoing, please contact the undersigned by February 28, 2012 to indicate Shamele55's willingness to comply with the above demands. If we do not hear from you or your attorney by that date, we will assume that you have decided to ignore our client's rights, and we will advise it accordingly.

Sincerely,  
CONLEY ROSE, P.C.



Grant Rodolph

Enclosures

cc: Monica Neary     [nearymonica@yahoo.com](mailto:nearymonica@yahoo.com)

# **Exhibit 1**

**\*-APPLICATION-\***

**Title**

**Title of Work:** Beatmunk Electro Shades

**Completion/Publication**

**Year of Completion:** 2011

**Date of 1st Publication:** [REDACTED]

**Nation of 1st Publication:** United States

**Author**

■ **Author:** Bartley Gillan

**Author Created:** illuminated glasses frame

**Citizen of:** United States

**Domiciled In:** United States

**Year Born:** 1985

**Copyright claimant**

**Copyright Claimant:** Beatmunk LLC

2002 Scenic Dr, Austin, TX, 78703, United States

**Transfer Statement:** By written agreement

**Limitation of copyright claim**

**Material excluded from this claim:** photograph(s)

**New material included in claim:** illuminated glasses frame

**Certification**

**Name:** Bartley Gillan

**Date:** [REDACTED]

**Registration #:**

**Service Request #:** 1-721196011

**Priority:** Routine

**Application Date:** [REDACTED]

---

**Correspondent**

**Organization Name:** Beatmunk LLC

**Name:** Bartley Gillan

**Email:** bartley.gillan@gmail.com

**Telephone:** 512-470-0387

**Address:** 2002 Scenic Dr  
Austin, TX 78703 United States

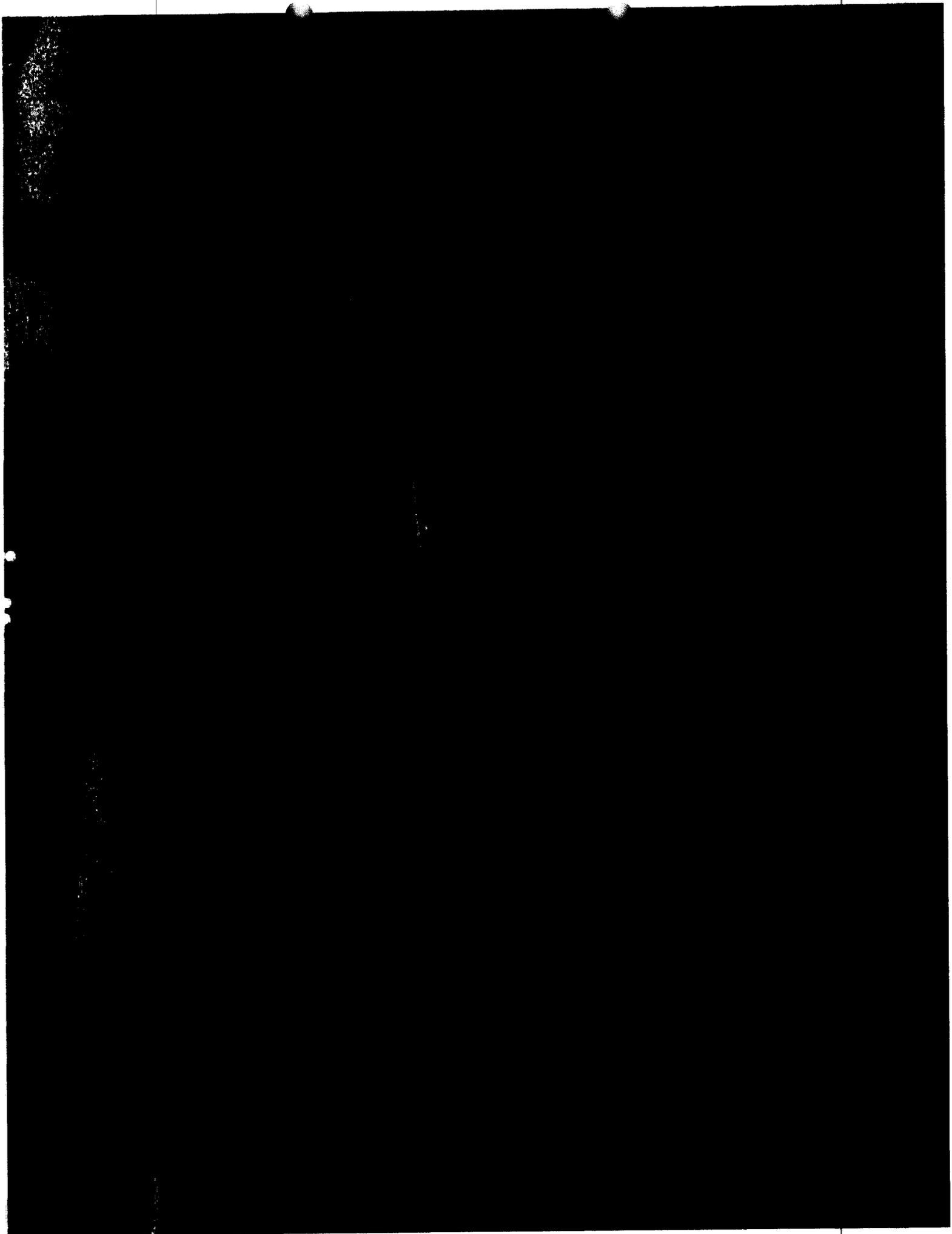
---

**Mail Certificate**

Beatmunk LLC  
Bartley Gillan  
2002 Scenic Dr  
Austin, TX 78703 United States







BBB

BBB

# Exhibit 2



# INVOICE

**Beatmunk**

<http://beatmunk.com>

Invoice number	0001
Invoice date	10/20/2011
Payment terms	Due on receipt
Due date	10/20/2011

**Send To**

[dboyle@musicplayer.com](mailto:dboyle@musicplayer.com)

Description	Quantity	Unit price	Amount
white electro shades	1	\$20.00	\$20.00
orange electro shades	1	\$20.00	\$20.00
<b>Subtotal</b>			<b>\$40.00</b>
<b>Shipping/handling</b>			<b>\$6.00</b>
<b>Total</b>			<b>\$46.00 USD</b>

# Exhibit 3

Email  Password

Keep me logged in [Forgot your password?](#)

Facebook helps you connect and share with the people in your life.



# SHAMELESS

Musician/Band

- Wall
- Info
- Photos

### About

Brand new way to illuminate your night with a new type of light show! These...

More

363

like this

323

talking about this

### Likes

[See All](#)

- HOUSE MUSIC
- B.A.D.A.S.S. RA...
- Dirty South
- Beyond Wonder...
- EPR

### Page Owners

- David Menard
- Donovan Boyle

### Wall

SHAMELESS · Everyone (Top Posts)

Share: [Post](#) [Photo](#) [Video](#)

Write something...

**Want to like or comment on this page?**

To interact with SHAMELESS you need to sign up for Facebook first.

It's free and anyone can join. Already a member? Log in.



#### SHAMELESS

Who thought last night was epic?? We sure did! If you gave us your email information last night, you will be hearing from us shortly! So Stay tuned and TGIF!

Like · Comment · February 10 at 11:13pm ·

Balentin Gonzales, Carlos Ramirez and Daniel Farfan like this.



#### SHAMELESS

See you all Tonight for TORQ THURSDAYS at Ruby Skye for MAT ZO!



#### Mat Zo - Bipolar

[www.youtube.com](http://www.youtube.com)

LIKE Above & Beyond on Facebook:

<http://on.fb.me/like-AB> CD: <http://bit.ly/vol9-cd>

iTunes: <http://bit.ly/vol9-itunes> iTunes US/CA:

<http://bit.ly/vol...>

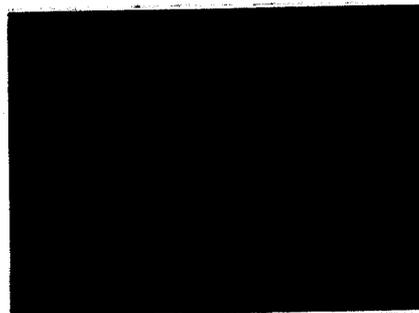
Like · Comment · February 9 at 11:43am ·

David Menard and Spencer Hardwick like this.



#### SHAMELESS

Have you ever seen Glasses that could Do This While You Dance? \$20 includes shipping :D EPR



Like · Comment · February 9 at 5:08am ·

Kyle Maglietta and Andrew Wayne like this.

### RECENT ACTIVITY

SHAMELESS edited their Genre and Biography.

SHAMELESS changed their Biography.



#### SHAMELESS

Come to Ruby Skye every Thursday Night (18+) to check out our hot new product! This week we have non other than Mat Zo!

Friend Page: <https://www.facebook.com/sfortq>

Like TORQ SF Here: <https://www.facebook.com/TORQSF>



Adrian Lux @Ruby Skye, SF  
Adrian Lux

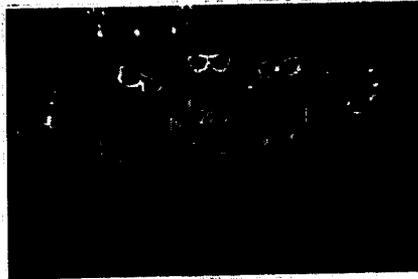
TORQ Presents Adrian Lux at Ruby Skye, San Francisco. Photos By Skyler Greene  
TORQ Presents Adrian Lux at Ruby Skye, 2/03/2012  
By: Dancing Astronaut

Like · Comment · February 7 at 10:50pm ·

Samantha Starr likes this.



SHAMELESS shared Dancing Astronaut's photo.



Adrian Lux @Ruby Skye, SF  
Adrian Lux

TORQ Presents Adrian Lux at Ruby Skye, San Francisco. Photos By Skyler Greene  
TORQ Presents Adrian Lux at Ruby Skye, 2/03/2012  
By: Dancing Astronaut

Like · Comment · February 7 at 10:36pm ·

Samantha Starr, Billy Ebony Jean and David Menard like this.



SHAMELESS

We will have more photographs up soon...that will blow your mind! ;) Stay tuned!

Like · Comment · February 7 at 10:30pm ·



SHAMELESS

Get your pair today! \$20  
<http://www.kickstarter.com/projects/davidmenard/SHAMELE55-shades>



Like · Comment · February 7 at 4:43pm ·

SHAMELESS, Jr Ayala, David Menard and 6 others like this.

View all 5 comments



SHAMELESS Then you should definitely try to hit up some events we attend, i.e. EPR and Torq thursdays at ruby skye. Being so close, you should have no problem getting shades in time for the big events! :-D

February 7 at 9:35pm · 2



Greg Russell Sounds good. I'm up north for school but I visit home all the time.

February 8 at 11:41am



SHAMELE55

<http://www.kickstarter.com/projects/davidmenard/shamele55-shades?ref=live>



SHAMELE55

David Menard & Donovan Boyle are a dynamic DJ duo that have invented a product called "SHAMELE55 Shades." Currently DJing for TORQ SF Thursdays at Ruby Skye as well as supporting WOMP in Oakland and Wednesday Electro Pop Rocks at 715 Harrison in San Francisco & Night Light Riot at the Black Door on Saturdays! If you ...

See More

Page: 363 like this

Like · Comment · February 6 at 9:48pm ·

SHAMELE55 likes this.

RECENT ACTIVITY

SHAMELE55 edited their Members, Genre and Biography.

SHAMELE55 edited their Biography and Description.

Older Posts

# Exhibit 4

What is Kickstarter? We're the world's largest funding platform for creative projects. [Learn more!](#)

## Kickstarter

- [Discover great projects](#)
- [Start your project](#)

- [Blog](#)
- [Help](#)
- [Sign up](#)
- [Log in](#)

Close

[Previous](#) [Next](#)

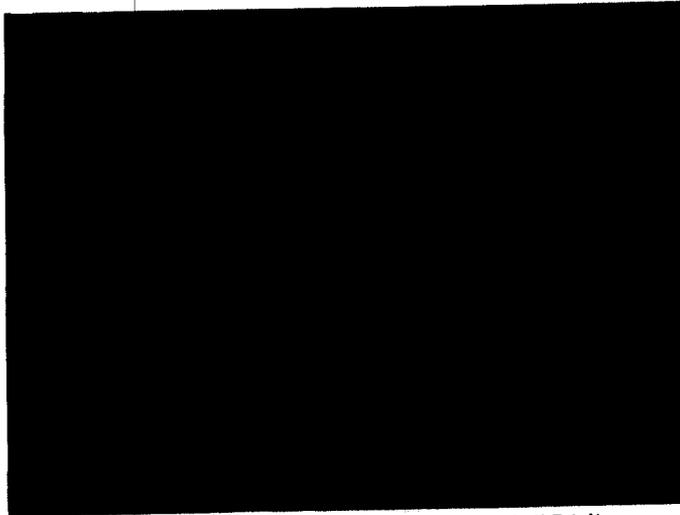
## SHAMELE55 Shades - Glasses That Glow and Strobe

A [Product Design](#) project in [San Francisco, CA](#) by [David Menard & Donovan Boyle](#) [send message](#)

- Don't want to forget? We'll remind you by email 48 hours before funding ends.

[Remind Me](#)

- [Project Home](#)
- [Updates 0](#)
- [Backers 31](#)
- [Comments 0](#)



Like

174 people like this. Be the first of your friends.

[Tweet](#)

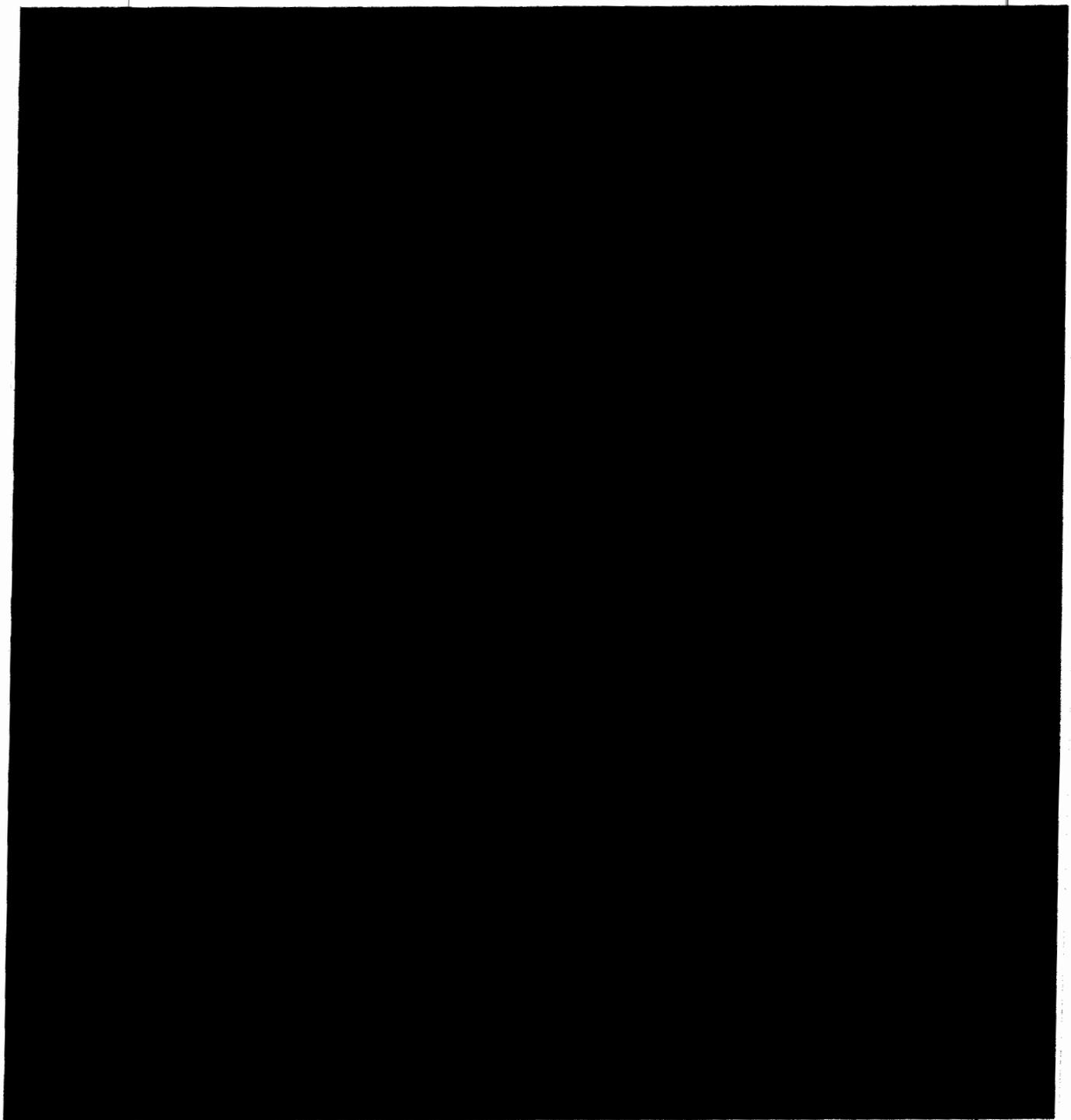
<http://kck.st/xRukcN>



SHAMELESS Shades will enhance your nightlife or party experience. Its unique and ingenious design attracts positive attention unlike anything you've seen.

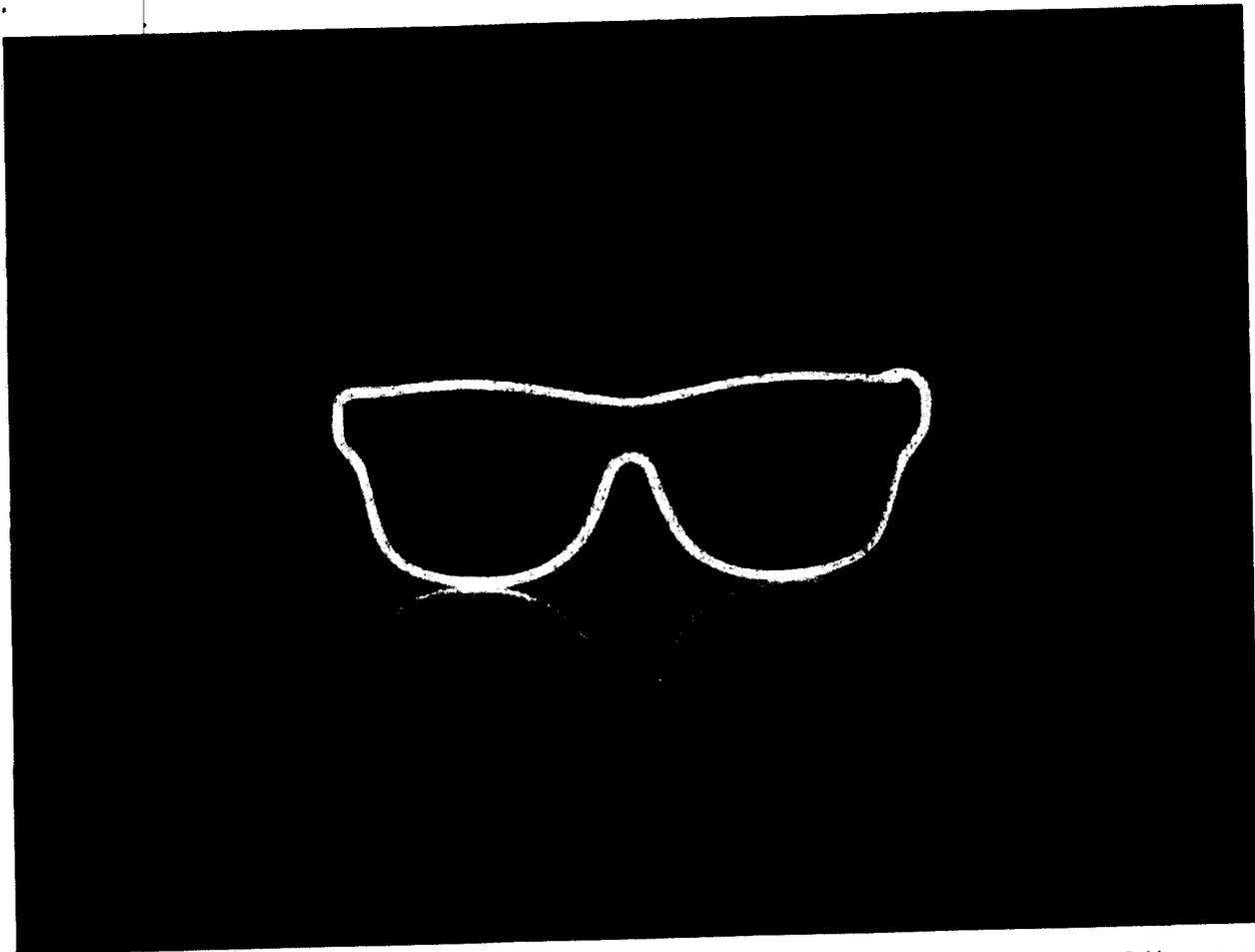
***GREEN with STROBE Feature***



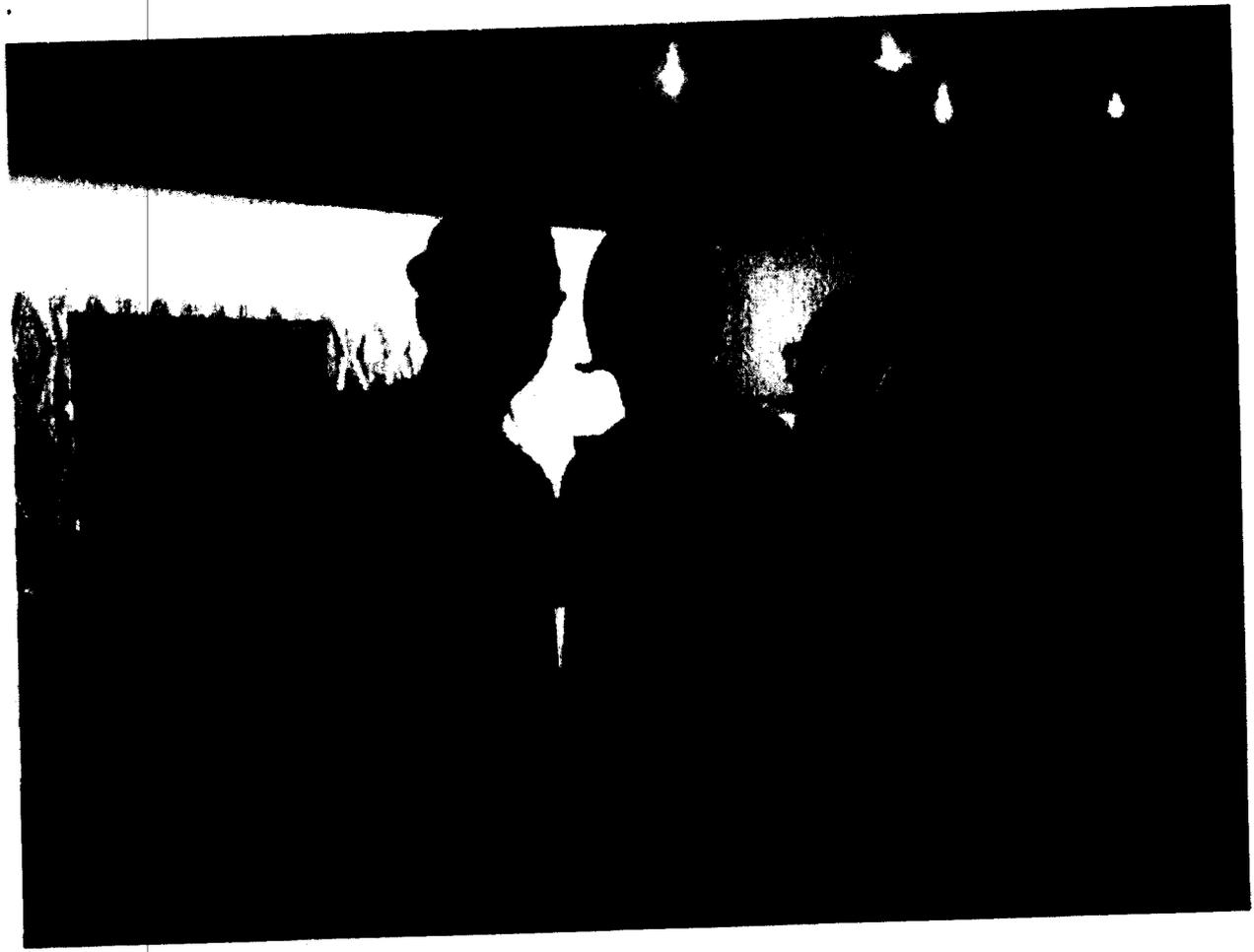


Our design is adding an electroluminescent wire to the outer frame and powering it with the smallest inverter possible giving the product a signature glowing effect. Not only do the glasses produce light, they have multiple settings to add a variety of uses. The first generation glasses will have the switch for blink on/off or constant on. The second generation glasses will feature a custom strobe effect and constant on. The strobe effect is dialed to a frequency of 60 frames per second giving a tracing effect of the wearer's movement or dance motions. By virtue of its design, the person wearing the glasses does not see the light around the frame and does not experience eye strain.

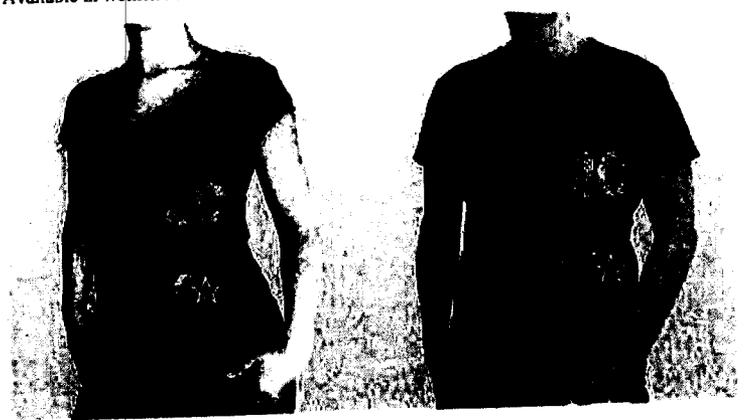
**PINK**



Most people who see the Shades want to have more than one pair to match their outfits. SHAMELE55 Shades are quickly becoming a trendy fashion accessory in the EDM industry giving the wearer a boost of confidence and the desired "ice breaking" attention.



**HOUSE MUSIC SAVED MY LIFE t-shirts**  
Available in women's and men's S , M , L , XL





**FAQ**

• FOR INTERNATIONAL ORDERS

PLEASE ADD \$10 MORE FOR SHIPPING. Thank you :)

Last updated: Wednesday Feb 1, 2:49pm EST

Ask a question

**Have a question?** If the info above doesn't help, you can ask the project creator directly.

Report this project to Kickstarter

**31 Backers**

**\$1,416 pledged of \$15,000 goal**

**15 days to go**

This project will only be funded if at least \$15,000 is pledged by Friday Mar 2, 8:30am EST.  
Back This Project \$1 minimum pledge

**Pledge \$1 or more**

1 Backer

Thank You for helping, we appreciate it.

**Estimated Delivery:** Apr 2012

**Pledge \$20 or more**

3 Backers

You will receive a single pair of SHAMELE55 Shades in either blue, pink or green BUT We Pick the Color. (The pledge includes shipping in the U.S., please add \$10 for international orders.)

**Estimated Delivery:** Mar 2012

**Pledge \$25 or more**

8 Backers

Not only have you joined the movement, name on website, but you will receive a single pair of SHAMELE55 Shades with the signature strobe effect! They will retail for \$30 after Pre-Order. (The pledge includes shipping costs)

**Estimated Delivery:** Mar 2012

**Pledge \$35 or more**

9 Backers

2 pairs of SHAMELE55 Shades with the signature strobe effect! Please note colors: blue, pink or green for your order. (The pledge includes shipping in the U.S., please add \$10 for international orders.)

**Estimated Delivery:** Mar 2012

**Pledge \$50 or more**

3 Backers

You join the movement, name on website, single pair of SHAMELE55 Shades with the signature strobe effect! + "HOUSE MUSIC SAVED MY LIFE" T-Shirt Please note the size and color (The pledge includes shipping costs)

**Estimated Delivery:** Mar 2012

**Pledge \$75 or more**

5 Backers

THE PARTY PACK 5 pairs of SHAMELE55 Shades with the signature strobe effect! + 1 [1] HR LIVE DJ SETS by SHAMELE55 Please note colors: blue, pink or green for your order. (The pledge includes shipping in the U.S., please add \$10 for international orders.)

**Estimated Delivery:** Mar 2012

**Pledge \$1,000 or more**

0 Backers

THE PROMOTER / DISTRIBUTOR PACKAGE 75 pairs of SHAMELE55 Shades with the signature strobe effect! + Link/Video/Pic on our website promoting your party! Please note colors: blue, pink or green for your order. Please contact us for details or questions and thanks!

**Estimated Delivery:** Mar 2012

**Project By**



**David Menard & Donovan Boyle**

Last Login 02/15/12

- [San Francisco, CA](#)
- [Has not backed any projects](#)
- [Send Message](#)

Connected as [David Menard](#) (1647 friends)

We are young DJs who have a creative side. We made these Shades for ourselves and everyone wants a pair when they see them. This is the beginning of SHAMELESS. We want to raise money to make these Shades and market them at different music events.

1. [SHAMELESS.com](#)

1.

**Browse Categories**

- [Art](#)
- [Comics](#)
- [Dance](#)
- [Design](#)
- [Fashion](#)
- [Film & Video](#)
- [Food](#)
  
- [Games](#)
- [Music](#)
- [Photography](#)
- [Publishing](#)
- [Technology](#)
- [Theater](#)

Kickstarter's weekly newsletter

Get awesome projects delivered to your inbox each week.

Your email address...

Kickstarter on Facebook

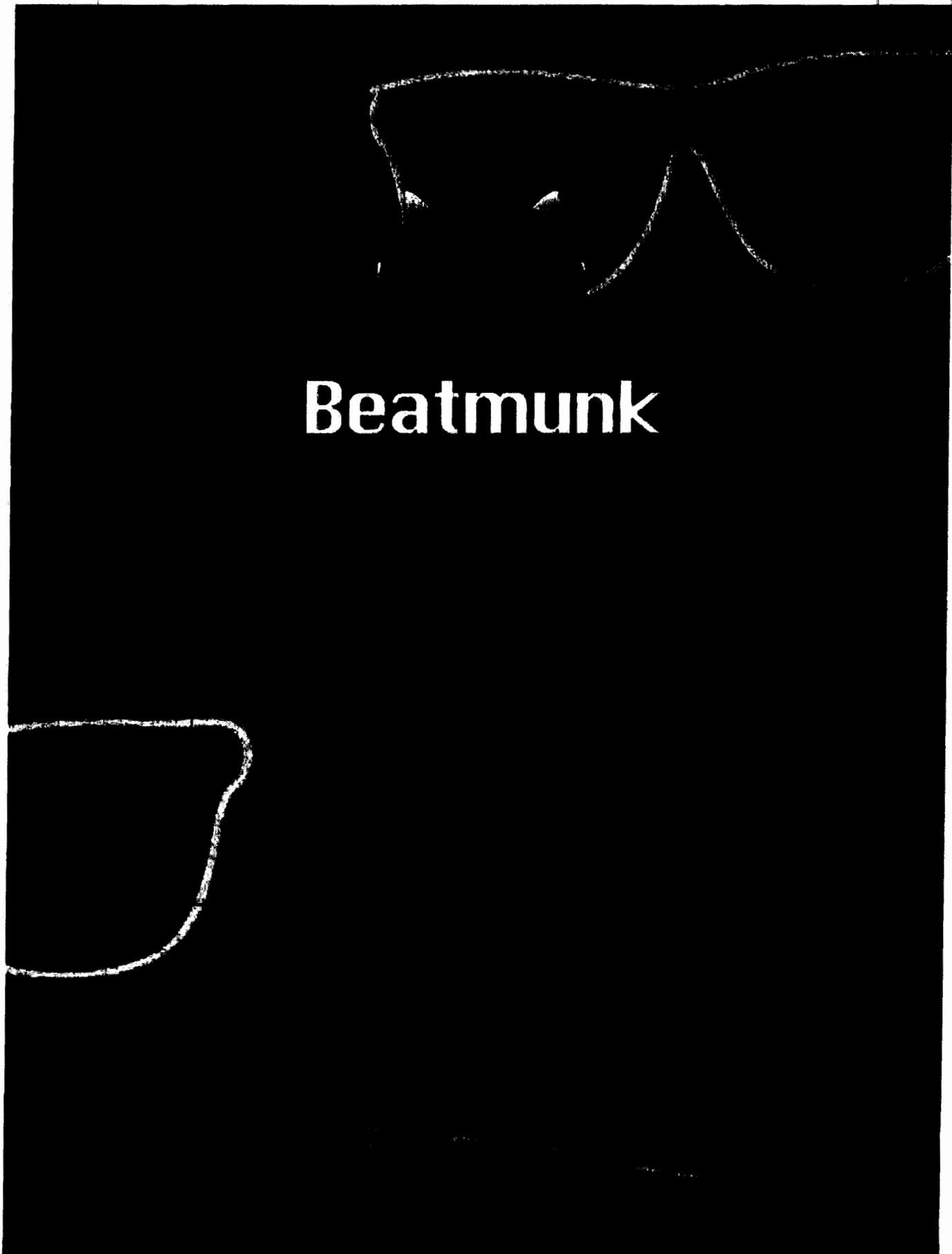
Like 191,669 people like this. Be the first of your friends.

Connect with Kickstarter

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- [Read our blog](#)
- [Meet the team](#)
- [Work with us](#)
  
- [Help](#)
- [Guidelines](#)
- [Terms of Use](#)
- [Privacy Policy](#)
- [Contact](#)

©2012 Kickstarter, Inc.

# Exhibit 5



# Beatmunk

# Exhibit 6

Username / Customer# Password

Log In

Forgot Password? | Create Account

Empty v

24/7 Sales & Support v

(480) 806-8877

WHOIS search results for: ELECTROSHADES.COM (Registered)

Is this your domain? Add hosting, email and more.

Want to buy this domain? Get it with our Domain Buy service.

The data contained in GoDaddy.com, LLC's WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, LLC. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, LLC is not the registrant of domain names listed in this database.

Registrant: EElectroShades

300 munchison dr 112 Millbrae, California 94030 United States

Registered through: GoDaddy.com, LLC (http://www.godaddy.com) Domain Name: ELECTROSHADES.COM Created on: 09-Nov-11 Expires on: 09-Nov-12 Last Updated on: 09-Nov-11

Administrative Contact: menard, david davidsmenard@gmail.com EElectroShades 300 munchison dr 112 Millbrae, California 94030 United States 6502018199

Technical Contact: menard, david davidsmenard@gmail.com EElectroShades 300 munchison dr 112 Millbrae, California 94030 United States 6502018199

Domain servers in listed order: NS73.DOMAINCONTROL.COM NS74.DOMAINCONTROL.COM

Registry Status: clientDeleteProhibited Registry Status: clientRenewProhibited Registry Status: clientTransferProhibited Registry Status: clientUpdateProhibited

See Underlying Registry Data Report Invalid Whois

NameMatch Recommendations

GoDaddy.com NameMatch has found similar domain names related to your search. Registering multiple domain names may help protect your online brand against internet squatters who could try to buy up these names in the hopes of selling them to you at an inflated price. It also enables you to capture more Web traffic, which you can then direct to your primary domain

Domains available for new registration:

Table with 2 columns: Similar Premium Domains and Price. Includes Sun-Shades.com (\$449.00\*), BeigeShades.com (\$449.00\*), RattanShades.com (\$459.00\*), ShadesOfMe.com (\$2,188.00\*), ShadesExpert.com (\$789.00\*), and ShadesAndShadows.com (\$2,488.00\*).

Learn more about

- Private Registration, Deluxe Registration, Business Registration, Protected Registration

\*Plus ICANN fee of \$9.95 per domain name year \*\* .CA domain names will be registered through Go Daddy Domains Canada, Inc., a CIRA certified registrar

Enter a domain name to search .com

Go Daddy Global

Country: United States



Currency: United States Dollar \$ (Transactional)

Account Manager

Shopping

Resource

Support

About Go Daddy

Mobile

Find Us On...

My Account  
 My Renewals  
 My Upgrades  
 Account Settings  
 Customer Information  
 Order History  
 Create Account

Domain Search  
 Product Catalog  
 Go Daddy Gear  
 Go Daddy Mobile  
 Deals of the Day

Webmail  
 WHOIS search  
 ICANN Confirmation  
 Affiliates  
 Follow & Fan Us  
 Legal  
 Commercial Contests  
 Site Map

Telephone Support & Sales  
 Product Support  
 Discussion Forums  
 User Groups  
 Submit Support Ticket  
 Site Suggestions  
 Report Spam  
 Go Daddy Scoop

About Us  
 News Releases  
 Careers  
 Marketing Opportunities  
 Customer Testimonials  
 Security Center  
 .ME Scholarship  
 Round Up for Charity

Go Daddy, on the GO!  
 iPhone Application  
 iPad Application  
 Android Application  
 BlackBerry Application  
 Visit GoDaddyMobile.com  
 Sign Up for Special Offers  
 Email Address



Submit

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[Legal](#) [Privacy Policy](#)  
 GoDaddy.com is the world's No. 1 ICANN-accredited domain name registrar for COM, NET, .ORG, INFO, BIZ and US domain extensions. Source: RegistrarSTATS.com  
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Although it often appears "WHOIS" or "Whois", the term is not an acronym. It means literally "Who is", referring to the searchable database that stores domain information for every URL currently registered on the Internet. Think of the WHOIS database as the "white pages" of the Internet neighborhood.

Search the GoDaddy.com WHOIS database whenever you want to know who a particular Web site belongs to. You may even be able to find the name and contact information of the business or individual who holds the registration on that domain. If the registration is private, specific information such as the holder's name, address, phone number and email address will be hidden from public view.

There are a number of reasons why you might want to use the GoDaddy.com WHOIS database:

- If you're a domainer, you might have your eye on a particular domain name(s) and want to know when it expires in the hopes of registering it yourself. You might also wish to approach the registrant with a private purchase offer.
- If you are the legal owner of a copyrighted name and you find someone else has registered a domain with that name in it, you'll want to take legal action against whoever's infringed on your rights by "cyber-squatting" on your Internet territory.
- If you come across your own original content reproduced without permission on another Web site, you may want to look up the name of the domain registrant in order to file a DMCA complaint against him or her. This federal act makes it illegal for anyone to produce or distribute another's original material on the Internet.

Law enforcement agencies use the WHOIS database to support national and international efforts including copyright protection and anti-terrorism laws. They're able to identify the registrant - or at least the host or registrar - of every domain name registered today. Legal infractions that can't be traced to an individual or business can certainly be traced to a registrar. Depending on the offense, the registrar may warn the site owner or shut down the Web site altogether.

GoDaddy.com has been active in combating Internet crime and abuse. GoDaddy.com lawyers have testified before the U.S. House Judiciary Subcommittee on Crime, Terrorism and Homeland Security about the rapid proliferation of illegitimate pharmacies and child pornography on the Internet. In fact, the company had a hand in the 2008 passage of the Ryan Haight Online Pharmacy Consumer Protection Act, named after a California teenager who died from an overdose of a drug he bought online.

# Exhibit 7

HOME

FREE MUSIC

Want the NEW NEW that no one else has?

Name \* \_\_\_\_\_

First \_\_\_\_\_ Last \_\_\_\_\_

City \* \_\_\_\_\_

Email \* \_\_\_\_\_

**Submit**



You can also find us on twitter to get updates on the parties we attend. We'll get you Guest List and Access to the Hottest SWAG before anyone else.



@ElectroShades



Thanks to TORQ we are giving away



**5 pairs of ElectroShades for Free!**

**Attend Dec. 15 2011 to win!**



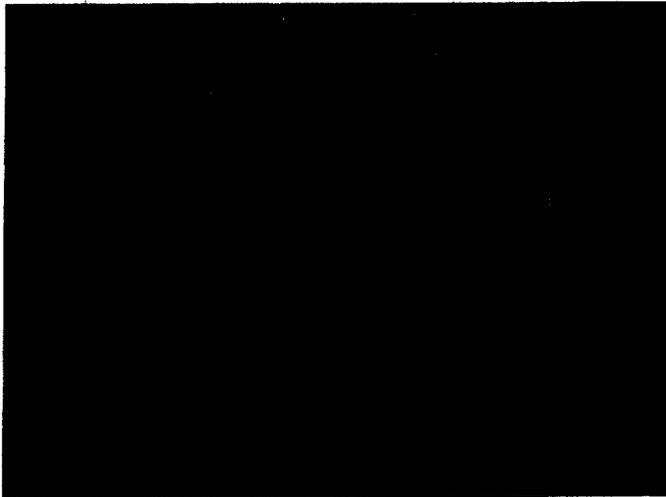
dj Radiant  
Never Walking Alone (RADIANT 2012 PREVIEW)

Share



202 1

dj RADIANT 's  
**NO SLEEP Essential Mix**  
Episode 1 - 'QUIT YOUR DAY JOB!'  
**FREE DOWNLOAD**



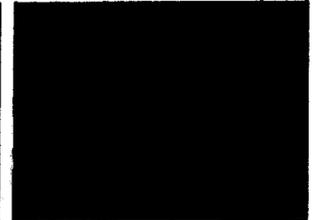
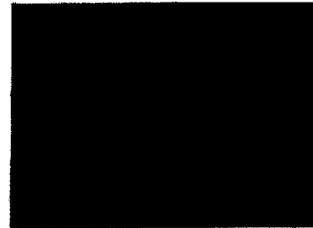
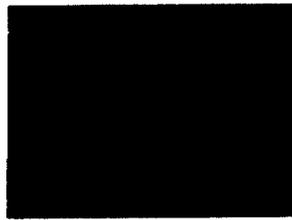
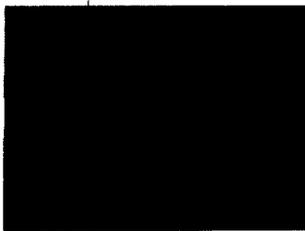
 dj Radiant  
QUIT YOUR DAY JOB

Share

53.37

271

(Click to enlarge)



Create a free website with

# **Exhibit 8**

Email  Password  **Log In**

Keep me logged in [Forgot your password?](#)

**Sign Up** Facebook helps you connect and share with the people in your life.



## ElectroShades.com

**Like**

**Create a Page**

Electronics

**Want to like or comment on this page?**

To interact with ElectroShades.com you need to sign up for Facebook first.

**Sign Up**

It's free and anyone can join. Already a member? [Log In](#).

Wall

Info  
Photos

Wall

ElectroShades.com · Everyone (Top Posts)

Share: [Post](#) [Photo](#) [Video](#)

Write something...

### About

Get the new new in sunglasses! Multi-setting EL wire outlined sunglasses t...  
[More](#)

47  
like this

2  
talking about this

### Likes

[See All](#)



Skills Dj Worksh...



Electric Daisy C...



SHAMELESS



SMT PHOTOGRA...



Steve Angello (S...

### Page Owners



David Menard

[Create a Page](#)



**ElectroShades.com**

Hey Guys If you wanna buy a pair of SHAMELESS Electro Shades.. you can now buy them online!



**SHAMELESS Shades - Glasses That Glow and Strobe**

[www.kickstarter.com](http://www.kickstarter.com)

Brand new way to illuminate your night with an all new style of shades! They are bright, unique, fun & glow!

[Like](#) · [Comment](#) · February 9 at 1:56pm



**ElectroShades.com**

Congratulations Balentin Gonzales on Winning a Free Pair of Electro Shades!

[Like](#) · [Comment](#) · January 18 at 8:08pm

ElectroShades.com, Arianne Torres and Balentin Gonzales like this.



**Priscilla Ng** I wanna buy some.. how much??

January 18 at 8:25pm · 1



**ElectroShades.com** They aren't for sale yet. You can only win them right now.. But be are giving away 5 more during my set at Ruby Skye tomorrow night

January 18 at 8:51pm · 2



**ElectroShades.com** whoops I forgot I was logged in as ElectroShades.. lol You can find more info about the Ruby Skye giveaway on our website. [ElectroShades.com](http://ElectroShades.com)

January 19 at 3:25am



**ElectroShades.com**

ATTN: We are having a contest right now. It runs from 12pm noon to 8 pm TONIGHT! If you want to win a pair of ElectroShades for TONIGHT!!!! all you have to do is Repost this message AND Share this Photo! super easy and there will be a winner announced at 8pm! Get them before EPR or WOMP tonight!!!



[Like](#) · [Comment](#) · January 18 at 5:26pm

Uriel Overton likes this.

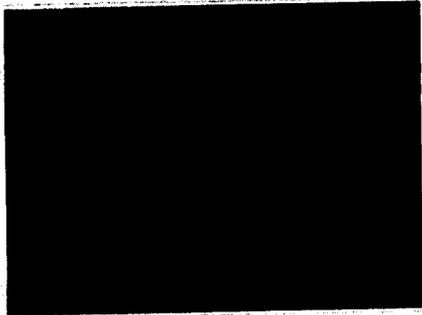
### RECENT ACTIVITY

ElectroShades.com changed their Founded.



**ElectroShades.com**

In just a few Hours we are going to launch a special Promo so you can get a free pair of Electro Shades! stay tuned for more details on how to win..



Introducing **ElectroShades.com**

By: **ElectroShades.com**

Like · Comment · January 18 at 3:49am ·

Spencer Hardwick, Priscilla Ng and 2 others like this.



**Tyler Gabriele** Are you guys selling shades tonight?  
February 9 at 1:45pm via mobile



**ElectroShades.com** We wish we could but we are currently sold out. We will receive more at the end of feb. The quickest way to get a pair is through our kickstarter page. <http://www.kickstarter.com/projects/davidmenard/SHAMELESS-shades>



**SHAMELESS Shades - Glasses That Glow and Strobe**  
[www.kickstarter.com](http://www.kickstarter.com)

Brand new way to illuminate your night with an all new style of shades!  
They are bright, unique, fun & glow!

February 9 at 1:55pm

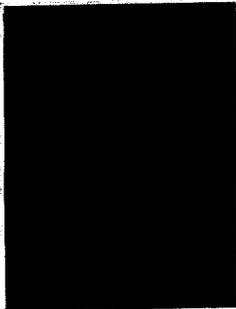


**Tyler Gabriele** Ok  
February 9 at 2:25pm



**ElectroShades.com**

Electroshades will match ur night!



Like · Comment · December 16, 2011 at 10:43am via mobile ·

Spencer Hardwick and Jeff Mistrex Smith like this.



**Uriel Overton** Looks like Ruby Skye based on the Wall behind that dude wearing the Electroshades  
January 18 at 3:35am

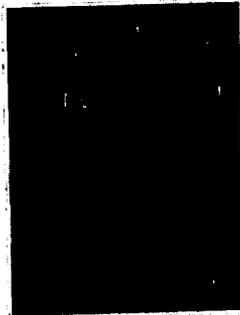


**ElectroShades.com** you guessed right! Check out the promo we have right now to win a free pair of shades for tonight! Its on our wall  
January 18 at 1:22pm · 1



**ElectroShades.com**

David down in the dada life madness!



Like · Comment · December 16, 2011 at 10:42am via mobile ·

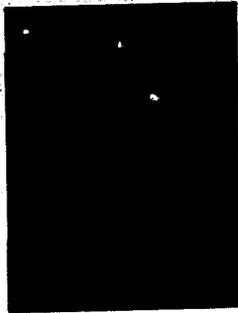
ElectroShades.com and Jeff Mstrex Smith like this.



Uriel Overton @Ruby Skye  
January 18 at 3:35am



ElectroShades.com  
Ruby skye - dada life...12/15/11



Like · Comment · December 16, 2011 at 10:07am via mobile ·

Uriel Overton, Jeff Mstrex Smith and 2 others like this.



ElectroShades.com  
Want to see the new Electro Shades in Person? If you haven't seen the new Strobe feature then your definitely outa the loop. We will be at Ruby Skye to see SPENCER & HILL for TORQ THUSDAYS. Sign up on DAVID MENARD's aka DJ RADIANT's DISCOUNTED GUESTLIST.



Guest List | TORQ Thursdays @ Ruby Skye - San Francisco  
torqsf.com

Like · Comment · December 5, 2011 at 2:24pm ·



ElectroShades.com added 6 new photos to the album Introducing ElectroShades.com.

Like · Comment · November 20, 2011 at 5:04pm ·

Jenzen Corre, Arianne Torres and ElectroShades.com like this.

1 share



Jenzen Corre yeah!  
January 18 at 3:06am · 1



**ELectroShades.com**  
check out our website... www.electroshades.com is there anything you dont like?

electroshades.com  
domains.google syndication.com

Like · Comment · November 18, 2011 at 1:46am ·



**Donovan Boyle** I don't like that we don't have 10,000 pairs  
already!!! hahah  
November 18, 2011 at 1:58am · 3

RECENT ACTIVITY

ELectroShades.com edited their Website and About.

Older Posts